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IN THE

Supreme Court of the United States

October Term, 1962.

No. 448.

HERMAN KRAVITZ,

Petitioner,

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

PETITIONER'S REPLY MEMORANDUM.

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ARGUMENT.

This reply is made necessary by the misstatements contained in the Brief of the United States in Opposition to the petition for a writ of certiorari filed by Petitioner.

1. It is to be particularly noted that the Government does not contest petitioner's statement that the prosecutor, at the time of the trial of petitioner, had in his pocket, so to speak, a *directive* from the Department of Justice to nolle pros the indictments pending in the District of New Jersey against Abrams. This rendered the statement of the prosecutor that Abrams "is not going to trial at this time in this district" misleading, if not actually false. Counsel for the

Government so admitted to the court below during oral argument. Certainly the true facts were concealed from the court and jury, and inquiry into the true facts was averted by the misleading character of the statement. Abrams' testimony, on cross-examination, was itself subject to the interpretation that the prosecution had made no agreement with him, whereas in fact his reward was a settled matter. The Government says that it was made clear at the trial that Abrams had an interest in shifting the tax to Kravitz, but this is not an adequate answer to the fact that the Government concealed and *misrepresented* a highly significant fact which undoubtedly affected the jury's judgment. And, of course, as between Abrams and the prosecutor, the jury would be more apt to believe the latter.

2. The Government refers to the fact that petitioner made a similar contention in his petition for rehearing in the Court of Appeals at the time that Court had before it the appeal from petitioner's conviction, and thereafter this Court denied a petition for writ of certiorari. It then says that there is no "substance" to his contention that additional facts since disclosed require a hearing.

Such glibness belies the truth. The petition for rehearing may have been rejected by the Court of Appeals because the matter raised was not an issue on the appeal, nor was it a part of the record on appeal. It was not until the argument of the appeal from the conviction that petitioner's counsel learned of the dismissel of the indictments against Abrams. An examination of the dismissal hearing disclosed a reference to a letter of "authorization" from the Department of Justice to the prosecutor, but the prosecutor stated in his answer to the petition for rehearing that the letter was *permissive* only. It was not until the *argument of the appeal below* that petitioner's counsel learned the true facts—that the letter was *mandatory*, that a "deal" had been made for Abrams' testimony and that the prosecutor concealed the truth and permitted a misconcep-

tion to stand. In every previous instance, the Government argument represented that the "permission" was not a "mandate"—all the while knowing that the prosecutor had a "mandate", not merely "permission", and that he knew it.

Apparently the Government is of the view that the best way to handle the problem in this Court is to cover it up with an argument that assumes the very point to be decided.

Originally, the Government was not candid with the district court, with the court of appeals or with this Court. The matter reaches to the very heart of the case against the petitioner. A sound factual basis for attacking the key witness against the petitioner was concealed and misrepresented. To say that this is nothing, because the jury was told to suspect the witness—when the district court itself (which, of course, did not know the truth) told the jury that "in the main" it believed Abrams—is to deny fairness and due process.

3. It is not correct that Petitioner changed his plea because of the district court's alleged reaction to the presentence report or that the district court communicated its reaction at that time, as the Government represents to this Court. Moreover, the Government misconstrues petitioner's position: the instant complaint is that the report contained false accusations and rumors. Petitioner could not complain of the fact that the district court read a report containing such matter at any earlier time because petitioner never knew the report contained the false accusations and malicious rumors about him until the district court mentioned them *for the first time* in its opinion denying petitioner's *motion for reduction of sentence.*

4. It is not true that the district court denied petitioner's motion for reduction of sentence *after hearing.* There was no hearing. There was no argument. The district court disposed of the motion on the motion itself.

It is submitted that this case requires the action of this Court to obtain for Petitioner fairness, due process and proper administration of justice.

The petition for writ of certiorari should be granted.

Respectfully submitted,

LEON H. KLINE,
Counsel for Petitioner.